

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: **RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE**

AND

First Respondent: **LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND**

AND

Second Respondent: **THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**

AND

Third Respondent: **ROGER SHOTTON**

AND

Intervener: **AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

APPLICATION

TAKE NOTICE that Mr David Whyte, the person appointed pursuant to section 601NF(1) of the *Corporations Act* 2001 (Cth) ("**the Act**") to take responsibility for ensuring that the LM First Mortgage Income Fund ARSN 089 343 288 ("**FMIF**") is wound up in accordance with its constitution is applying to the Court for the following orders:-

1. That the remuneration of David Whyte, as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution, for the period 1 May 2021 to 31 October 2021 be fixed in the amount of

APPLICATION:
Form 9 r.32

TUCKER & COWEN
Solicitors
Level 8
300 George Street
Brisbane, Qld, 4000.
Tele: (07) 300 300 00
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Filed on behalf of the Applicant, Mr David Whyte

\$924,169.40 (inclusive of GST) pursuant to paragraph 3(c) of the Orders of Justice Dalton on 21 August 2013.

2. That David Whyte's costs of and incidental to this application be costs in the winding up of the FMIF, to be paid out of the assets of the FMIF.
3. Such further or other order as the Court sees fit.

This application will be heard by the Court at Brisbane

on: 2021 at 10.00 am

Filed in the Brisbane Registry on 2021

Registrar:

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the hearing of the application the applicant intends to rely on the following affidavit:

1. Affidavit of David Whyte sworn on 8 November 2021 and filed with this application;
2. Affidavit of Gerald Thomson Collins sworn on 12 November 2021 and filed with this application;
3. Affidavit of David Whyte sworn on 31 May 2021 and filed on 14 July 2021;
4. Affidavit of Gerald Thomas Collins sworn on 23 June 2021 and filed on 14 July 2021;
5. Affidavit of David Whyte sworn and filed on 7 November 2014;
6. Affidavit of David Whyte sworn and filed on 8 June 2016;
7. Affidavit of David Whyte sworn and filed on 17 November 2016;
8. Affidavit of David Whyte sworn and filed on 13 June 2017;
9. Affidavit of David Whyte sworn 9 November 2017 and filed 10 November 2017;
10. Affidavit of David Whyte sworn 31 May 2018;
11. Affidavit of David Whyte sworn and filed on 13 November 2018;

12. Affidavit of David Whyte sworn and filed on 6 June 2019;
13. Affidavit of David Whyte sworn and filed on 21 November 2019;
14. Affidavit of David Whyte sworn and filed on 11 May 2020;
15. Affidavit of David Whyte sworn on 11 June 2020 and filed on 12 June 2020.
16. Affidavit of David Whyte sworn 22 January 2021 and filed 2 March 2021.
17. Affidavit of Gerry Collins sworn 1 February 2021 and filed 2 March 2021.
18. Affidavit of David Whyte sworn on 7 May 2020 and filed on 2 March 2021.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED
1 HOUR

Signed:



Tucker & Cowen

Description: Solicitors for the Applicant, Mr David Whyte

Dated: 12 November 2021

This application is to be served on:

The members of the LM First Mortgage Income Fund (in the manner prescribed by the Order of P Lyons J dated 1 June 2015 as amended by the Orders of Mullins J dated 17 December 2019).

LM Administration Pty Ltd (In Liquidation) ACN 055 691 426
C/- Mr David Clout
David Clout & Associates
105A Bowen Street Spring Hill
GPO Box 7870
Brisbane QLD 4001

LM Investment Management Limited (In Liquidation) as responsible entity of the
LM First Mortgage Income Fund ARSN 089 343 288
C/- Russells Lawyers
Level 18, 300 Queen St
Brisbane QLD 4000

Australian Securities and Investments Commission
Level 20
240 Queen Street
Brisbane QLD 4000

Trilogy Funds Management Limited as Responsible Entity of the LM Wholesale
First Mortgage Income Fund

Level 23
10 Eagle Street
Brisbane QLD 4000